



October 6, 2009

Special Alert:

**Department of Homeland Security Issues
Final Rule Rescinding 'No-Match' Regulation**

On October 6, 2009, the Department of Homeland Security (DHS) announced that it will issue a final rule, to be published in the Federal Register on October 7, 2009, rescinding the embattled "No-Match" regulation. As we have previously reported, DHS is of the opinion that the receipt of a "No-Match" letter provided constructive knowledge to an employer that an employee may not be authorized to work. This rule would have created a "safe-harbor" procedure for employers to respond to "No-Match" letters, thus clearing employers from any knowing hire liability for that worker.

DHS first announced its intention to rescind the "No-Match" rule on August 19, 2009, through the publication of a proposed rule. This action was the culmination of months-long federal litigation concerning whether or not the rule had been lawfully promulgated and whether or not it was constitutional.

In taking this step, effectively abandoning the litigation, DHS stated as follows: "After further review, DHS has determined to focus its enforcement efforts relating to the employment of aliens not authorized to work in the United States on increased compliance through improved verification, including participation in E-Verify, ICE Mutual Agreement Between Government and Employers (IMAGE), and other programs."

Employers beware, upon publication of the rule we fully expect the Social Security Administration to begin issuing new "No-Match" letters and DHS will still consider the receipt of a "No-Match" letter as an indicator of unauthorized employment. Although there will be no "safe-harbor," employers should have a plan and procedure in place to address the receipt of a "No-Match" letter. Having a proper plan in place not only helps an employer maintain the integrity of its workforce from an immigration perspective, but also assists an employer in meeting its W-4 reporting requirements with respect to Social Security withholdings.

CLIENT ALERT

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